Petition for Rule Making

Response to FCC Request For Comments GN Docket No. 12-91:

Submitted by:

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Introduction and background:

In the FCC Request for Comments GN Docket No 12-91:

http://www.fcc.gov/document/commission-seeks-comment-amateur-emergency-communications

the FCC requests comments on a number of questions including Question 2 (d)

"2. Impediments to enhanced Amateur Radio Service communications. The statute also requires that the study identify impediments to enhanced Amateur Radio Service communications and recommendations regarding the removal of such impediments.

d. Do any Commission rules create impediments to enhanced Amateur Radio Service communications? What are the effects of these rules on the amateur radio community's ability to use the Amateur Radio Service? Do disaster and/or severe weather situations present any special circumstances wherein Commission rules may create impediments that would not otherwise exist in non-disaster situations? What actions can be taken to minimize the effects of these rules?"

In response to this request for comment, I submitted a written comment regarding encryption. In the FCC response to the comments received on FCC Request for Comments GN Docket No 12-91:

http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0820/DA-12-1342A1.pdf

the FCC noted regarding specifically that:

"37. The Commission's rules prohibit the transmission by amateur stations of "messages encoded for the purpose of obscuring their meaning."[80] Commenters argue that transmission of sensitive data, such as medical information that is subject to privacy requirements under the Health Insurance Portability and

Accountability Act (HIPAA), is often a necessary aspect of emergency response, and therefore the use of encryption should be permitted under appropriate circumstances, such as by credentialed operators.[81]"

And

"40. Other impediments. As noted above, the Commission has already preempted state and local regulations that do not reasonably accommodate amateur radio communications and do not represent the minimum practicable regulations to accomplish the local authority's legitimate purpose. The Commission has also addressed regulations regarding possession and operation of amateur radio equipment while driving.[87] Commission rules that may be an impediment to enhanced amateur service emergency communications can, as the ARRL notes, be considered through the Commission's rulemaking process.[88] Consequently, we do not believe that Congressional action is necessary to address any of these issues."

In accordance with FCC comments in section 40 in response to the encryption issues discussed in section 37, this is a formal request for rule making to modify the encryption regulations on the use of encryption in amateur radio communications.

Discussion:

It has been observed in a variety of contexts, that agencies served by amateur radio communication during emergencies perceive the following:

- that encryption of certain emergency data is required (e.g. specific patient information covered by HIPAA, identification of sheltered persons, etc.)
- that certain emergency information is required for tactical purposes to be encrypted (e.g. certain logistical information: movement of food, medical supplies, certain movements of personnel)
- that for national security reasons certain emergency communications should be encrypted

FCC regulations part 97.113 (4) state:

"§ 97.113 Prohibited transmissions.

(a) No amateur station shall transmit:

(4) … messages encoded for the purpose of obscuring their meaning, except as otherwise provided herein; …"

As such, encryption cannot be effectively supported by the amateur service and this ~~tension~~restriction has impacted the relationship of amateur radio volunteers and served agencies and significantly limited the effectiveness of amateurs in supporting emergency communications.

Perhaps the simplest approach to resolving this ~~tension and removing this~~ impediment to amateur support of emergency communications is to modify the regulations regarding encryption. It is noted than in Part 97.213, ~~this~~such relaxation has already occurred for satellite control link communications:

"§ 97.211 Space telecommand station.
(a) Any amateur station designated by the licensee of a space station is eligible to transmit as a telecommand station for that space station, subject to the privileges of the class of operator license held by the control operator.

(b) A telecommand station may transmit special codes intended to obscure the meaning of telecommand messages to the station in space operation."

Likewise the encryption issue has already been addressed for model craft radio control in Part 97.215:

"§ 97.215 Telecommand of model craft.
An amateur station transmitting signals to control a model craft may be operated as follows:

(b) The control signals are not considered codes or ciphers intended to obscure the meaning of the communication."

It would seem that one could remove this impediments to emergency communications activity by amateur radio operators by providing a similar exception to the encryption requirements for emergency communications.

It is perhaps useful to consider the Australian approach to this issue. As I understand it, the Australian amateur radio service is governed the Radio communications License Conditions, and the 2010 amendments to this document may be found at:

http://www.comlaw.gov.au/Details/F2010C00897/Html/Text#param66

This document stipulates in Part 8 paragraph (3A) that:

"Part 8 Operation of an amateur station:

(3A) The licensee must not operate an amateur station to transmit signals that are encoded for the purpose of obscuring the meaning of the signals, except for:

(a) signals exchanged between an amateur station and a space station in the amateur satellite service for the purpose of controlling the operation of the space station; and

(b) signals exchanged between an amateur station and an unattended amateur station for the purpose of controlling the operation of the unattended amateur station; and

(c) intercommunications when participating in emergency services operations or related training exercises.”

It is important to note that for amateur radio support of emergency encryption to be effective and well coordinated with the served agencies in times of emergency, that encryption must be authorized not only during the emergency, but also in training activities in preparation for emergency communications, and this need is captured in the Australian regulations.

Request for rulemaking:

If the FCC were to make similar modification to Part 97 to capture the intent of the Australian regulations Part 8 Paragraph 3A part c, this impediment of amateur radio support of emergency communications would be relieved, enhancing the amateur radio community’s ability to effectively coordinate with served organizations and to support of emergency communications.

Potentially the wording might look like:

97.113 Prohibited transmissions.

(4) Music using a phone emission except as specifically provided elsewhere in this section; communications intended to facilitate a criminal act; messages encoded for the purpose of obscuring their meaning, except as otherwise provided herein; obscene or indecent words or language; or false or deceptive messages, signals or identification. Encryption is, however, permissible under the following conditions:

a) signals exchanged between an amateur station and a space station in the amateur satellite service for the purpose of controlling the operation of the space station; and

(b) signals exchanged between an amateur station and an unattended amateur station for the purpose of controlling the operation of the unattended amateur station; and

(c) intercommunications when participating in emergency services operations or related training exercises which may involve information covered by HIPAA or other sensitive data such as logistical information concerning medical supplies, personnel movement, other relief supplies or any other data designated by Federal authorities managing relief or training efforts~~or related training exercises~~.~~”~~

It would appear that this change would plausibly need to be coordinated with Part 97.213 and 97.215 to ensure regulatory consistency.

We thank the FCC for their efforts to address emergency communications by amateur radio operators in general, and would petition the FCC to consider modification to the encryption requirements in particular.

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